

TOBACCO SMOKING AND SALE BYLAW

SECTION I. AUTHORITY

There exists: (1) Conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, and precipitates allergic and hypersensitivity reactions of the lungs, eyes, nose and throat in nonsmokers exposed to second-hand smoke; and (2) Ample concern that minors have access to tobacco products, despite State laws that prohibit such access. Therefore, this bylaw is adopted to protect and maintain the good health of the residents of Boxborough, Massachusetts. Future tobacco regulations, if necessary, may be made by the Board of Health, separate and aside from this bylaw, pursuant to M.G.L. Chapter 111, section 122.

SECTION II. DEFINITIONS

As used in this bylaw:

Bar: An area that is dedicated primarily to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Private Business: Any non-municipal enterprise that does not come into daily contact with the public as part of its normal course of business, except for certain places in their buildings, including elevators, stairwells, halls, entranceways, and public restrooms which will be regarded as public places.

Public Place: An enclosed, indoor area open to and used by the general public, including but not limited to the following facilities: auditoriums; licensed childcare locations; educational facilities; churches; elevators accessible to the public; hotel lobbies; stairwells, halls, entranceways, and public restrooms; libraries; municipal buildings; retail stores; retail food establishments; indoor sports arenas or facilities; and any rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place. Private businesses, except for those areas mentioned above, will not be considered public places.

Restaurant: Any establishment serving food for consumption on the premises.

Retail Food Establishment: Any business commonly known as a convenience store, supermarket, or grocery store in which the primary activity is the sale of food items to the public for off-premises consumption.

Smoking means the lighting of any cigar, cigarette, pipe, or other tobacco product or possessing any lighted cigar, cigarette, pipe or other tobacco product.

SECTION III. PROHIBITION ON SMOKING IN PUBLIC PLACES

A. Places Affected

No person shall smoke in any public place except as where specifically defined herein. No place shall be required to provide smoking areas.

1. Restaurants and Bars

- a. Smoking is prohibited in all restaurants with the exception of the bar (see below).
- b. Seats at a bar, within ten (10) feet of the bar counter, may be designated as a smoking area.

2. All other Public Areas

Tobacco smoking is prohibited in all other Public Areas (as previously defined).

3. All other Areas

Smoking is permitted with the consent of the owner, in all areas not specifically addressed elsewhere in this bylaw. This includes but is not limited to: private residences, private hotel lodgings, hotel conference/meeting rooms, and private assembly rooms while these places are being used for private functions.

B. Implementation

The proprietor or other person(s) in charge of a public place shall prevent smoking in nonsmoking areas by all of the following:

1. Conspicuously posting:

- a. A notice or sign at each entrance to the public place indicating smoking is prohibited therein; and
- b. "No Smoking" signs, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in every area where smoking is restricted by this bylaw;

2. Asking patrons who may be smoking in the nonsmoking area to either refrain from smoking or to move to a smoking area;

3. Using any other means which may be reasonable and appropriate to enforce this bylaw, including the summoning of the police, if necessary.

C. Enforcement

1. Any member of the Boxborough Police Department, Boxborough Board of Health, the Health Agent for the Nashoba Associated Boards of Health or other individuals so designated by the Boxborough Board of Health, is hereby authorized to enforce this bylaw.

2. Any person who smokes in a non smoking area shall be subject to a fine of twenty (\$20.00) dollars for each violation.

3. Any proprietor(s) or other person(s) in charge of a public place who fail(s) to comply with these regulations shall be subject to both:

- a. A fine of fifty (\$50.00) dollars, for each day a violation continues; and
- b. Suspension of any license issued by the Board of Health for the public place for a period of up to two (2) days for each day of noncompliance. Reissue of such license shall require payment of the usual and customary application fee for that license.

SECTION IV. PREVENTING TOBACCO SALES TO MINORS

A. Current Massachusetts State Law Provides:

1. Sales to Minors

In conformance with M.G.L., Chapter 270, Section 6, available from the Massachusetts Department of Public Health, any person who sells tobacco in any of its forms to any person

under the age of eighteen (18) or, not being his parent or guardian, gives tobacco in any of its forms to any person under the age of eighteen (18), shall be punished by a fine of not less than one hundred (\$100.00) dollars for the first offense, not less than two hundred (\$200.00) dollars for the second offense and not less than three hundred (\$300.00) dollars for any third or subsequent offense.

2. Posting of State Law

In conformance with M.G.L., Chapter 270, Section 7, a copy of M.G.L., Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the establishment used to sell cigarettes at retail. The notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. For all other cash registers through which tobacco products are sold, a notice shall be attached which is no smaller than nine (9) square inches, which is the size of the sign provided by the Massachusetts Department of Public Health.

B. Boxborough Bylaw

1. Sales to Minors

No person or business shall sell or provide tobacco in any of its forms to any person under the age of eighteen (18).

2. Vending Machines

Cigarette vending machines, or any other devices used for the sale or distribution of tobacco products, are prohibited, unless said machine is equipped with an operational lock-out device approved by the Board of Health. This device shall prevent sales from the machine unless an employee manually releases the lock for a single sale. The release mechanism must not allow continuous operation and must not be accessible to non-employees. Vending machines shall be posted with a sign stating that it is equipped with a lock-out device and identify the person(s) to contact to purchase cigarettes from the machine. The holder of the vending machine permit shall be liable for all illegal sales to minors, as specified below under (C) Enforcement.

3. Location of Free-standing Displays

Free-standing Displays of cigarette products, from which individual packages or cartons may be accessed, must be located behind the counter or otherwise beyond arm's reach of customers.

4. Sales by Persons Under Age 18

No persons or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the Board of Health, that he/she understands and will uphold this bylaw.

5. Permit Required

It shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid tobacco retailer permit from the Town of Boxborough. Any person, business, or establishment currently selling tobacco within Boxborough shall file an application for a tobacco sales permit or cease all tobacco sales. The term of the permit shall be one calendar

year if, and only if, the licensee complies with this bylaw. This permit requirement shall not apply to cigarette vending machines licensed pursuant to M.G.L., Chapter 64C, Section 2.

a. Fee for Permit

The fee for a one-year tobacco retailer's permit is twenty-five (\$25.00) dollars, for each retail location.

b. Non-transferability

A tobacco retail permit is non-transferable, however a new permit will be issued to a tobacco retailer who changes location within the Town of Boxborough.

C. Enforcement

1. Fines and Revocation of Tobacco Permit for Sales to Minors

Fines shall be levied and permit suspended as follows:

- i In the case of a first violation, the licensee shall be fined one hundred (\$100.00) dollars and shall be notified in writing of penalties levied for further violations.
- ii In the case of a second violation with twelve (12) months of the first, the licensee shall be fined two hundred (\$200.00) dollars and the permit shall be suspended for not less than seven (7) consecutive business days, nor more than thirty (30) calendar days.
- iii In the case of three or more violations within any twelve (12) month period, the licensee shall be fined three hundred (\$300.00) dollars and the permit shall be revoked for not less than thirty (30) calendar days nor more than six (6) calendar months from the date of revocation.

2. Any person who violates any aspect of this bylaw, other than the sale of tobacco products to minors (see above), shall be punished by a fine of twenty-five (\$25.00) dollars.

3. The aforementioned State Laws and Boxborough Town Bylaws are hereby enforceable by the Boxborough Police Department, Boxborough Board of Health, the Health Agent for the Nashoba Associated Board of Health, or other designated by the Boxborough Board of Health. Monitoring for compliance with this bylaw may be enforced through periodic inspections. Inspections may include the attempted purchase of tobacco products by minors under the supervisions of an agent of the enforcing authority. Such an inspection shall not be construed as "entrapment".

SECTION V. OTHER APPLICABLE LAWS

This bylaw shall not be interpreted or construed as to permit smoking where it is otherwise restricted by other applicable health, safety, or fire codes, regulations or statutes.

SECTION VI. VARIANCES

The Board of Health, following a public hearing, may allow a variance of any provisions of this bylaw with respect to any particular case or circumstance when, in the opinion of the Board, the enforcement thereof would cause a manifest injustice. Any variance granted shall be in writing with a copy available to the public during normal business hours in the office of the Town Clerk and Board of Health.

SECTION VII. SEVERABILITY

If any provision of this bylaw is declared invalid or unenforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.

SECTION VIII.

The provisions of this bylaw may be enforced through Non-Criminal Disposition or other civil action. The individuals designated in Section III, Part C, Subpart 1, are hereby authorized to enforce this bylaw through non-criminal disposition.

Adopted: May 17, 1995

Approved by Attorney General: July 24, 1995